

37 Am. Jur. 2d Fraud and Deceit § 195

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Fraud and Deceit

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V. Concealment

A. In General

§ 195. Knowledge and intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  16, 17

Trial Strategy

[Cause of Action Against Seller for Intentional Fraud or Deceit in Sale of Real Property, 32 Causes of Action 2d 659](#)

A party can be liable for the fraudulent suppression of a material fact only if the party had knowledge of the material fact that was allegedly suppressed,¹ and it follows that a party cannot be liable for concealing a fact of which the party was unaware.² Accordingly, when a concealed fact is not peculiarly within a defendant's knowledge and is readily ascertainable, the failure to disclose that fact does not amount to fraud.³ Furthermore, in an action alleging fraudulent concealment, the allegedly defrauded party must prove that the alleged defrauders had actual, not merely constructive, knowledge of the fact concealed.⁴ A finding of fraudulent nondisclosure requires a failure of a disclosure of known facts, and a mere intention to perform an act in the future cannot be considered a "known fact" because a party's intention to perform may never materialize into actual performance, and there is no obligation as to one's intention or expectation.⁵

Practice Tip:

There can be no fraudulent suppression if information allegedly suppressed is provided in a form signed by the party complaining about the suppression.⁶

Omissions of disclosure are actionable only if the failure to disclose was intentional.⁷ Although the requisite intent for fraudulent concealment is less than an evil-minded act, it requires more than mere negligence.⁸ Plaintiffs must show by clear and convincing evidence that the other party either knowingly or recklessly disregarded the risk of omitting material facts.⁹ They may also satisfy the scienter requirement of a fraudulent omission claim by a showing of reckless indifference to error or a pretense of exact knowledge.¹⁰

Practice Tip:

The intent to mislead another into relying on a concealment must be inferred from the totality of the circumstances because it is rarely provable by direct evidence.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Under Alabama law, even a defendant who has no duty to disclose arising from his relationship with the plaintiff may nevertheless be liable for fraudulent concealment if he knowingly takes action to conceal a material fact that has been requested of him by the plaintiff and does so with the intent to deceive or mislead the plaintiff. [Halbert v. Credit Suisse AG](#), 402 F. Supp. 3d 1288 (N.D. Ala. 2019).

Buyer of accounts receivable for toxicology lab testing services failed to allege seller intentionally suppressed the fact that it was diverting receivables from toxicology services to other entities that it owned, and thus failed to state a claim under Nevada law for fraudulent concealment. [Aliya Medcare Finance, LLC v. Nickell](#), 156 F. Supp. 3d 1105 (C.D. Cal. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Cork v. Marriott Intern., Inc.](#), 426 F. Supp. 2d 1234 (N.D. Ala. 2006) (applying Alabama law); [GE Capital Aviation Services, Inc. v. Pemco World Air Services, Inc.](#), 92 So. 3d 749 (Ala. 2012).
- 2 [Ausley v. Bishop](#), 133 N.C. App. 210, 515 S.E.2d 72 (1999).
- 3 [Boubelik v. Liberty State Bank](#), 553 N.W.2d 393 (Minn. 1996).

- 4 Wolf v. Middleton, 305 Ga. App. 784, 700 S.E.2d 598 (2010).
5 Pospisil v. Pospisil, 59 Conn. App. 446, 757 A.2d 655 (2000).
6 Cunningham v. H.A.S., Inc., 74 F. Supp. 2d 1157 (M.D. Ala. 1999).
7 Leal v. Holtvogt, 123 Ohio App. 3d 51, 702 N.E.2d 1246, 37 U.C.C. Rep. Serv. 2d 953 (2d Dist. Miami
 County 1998).
8 Allis-Chalmers Corp. Product Liability Trust v. Liberty Mut. Ins. Co., 305 N.J. Super. 550, 702 A.2d 1336
 (App. Div. 1997).
 As to negligent concealment, see § 196.
9 Manley v. AmBase Corp., 126 F. Supp. 2d 743 (S.D. N.Y. 2001) (applying New York law).
10 Allen v. Westpoint-Pepperell, Inc., 11 F. Supp. 2d 277 (S.D. N.Y. 1997), *aff'd* on other grounds, 143 F.3d
 71 (2d Cir. 1998) (applying New York law).
11 Leal v. Holtvogt, 123 Ohio App. 3d 51, 702 N.E.2d 1246, 37 U.C.C. Rep. Serv. 2d 953 (2d Dist. Miami
 County 1998).

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